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COMMISSION ON HUMAN RIGHTS
Subcommission on Prevention
of Discrimination and
Protection of Minorities
Forty-seventh session
Item 4 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS WITH WHICH
THE SUBCOMMISSION HAS BEEN CONCERNED

Written statement submitted by the International Humanist and Ethical Union, a non-governmental organization on the Roster

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[18 July 1995]

Development and human rights - A case in point

1. In a search for sustained development it has sometimes been held that "the end justifies the means". While in a mature State - if such exists - any means employed should be consistent with the ends sought, under conditions of rapid and sustained development the situation may be more complex.

2. Over the last five years this would be especially true. Since 1990 our global scene has been transformed into a nihilistic arena of competitive self-interest, with developmental and human rights dimensions being largely negated - all but swamped in a rule-free extravaganza of financial deregulation and overall economic slump.

3. Any tension between rights and development may be more marked in large countries than in small ones, and the purpose here is to illustrate this problem by reference to a specific case - one arising in a State that successfully pursues intensively sustained development on behalf of more than 20 per cent of the world's people while faced with the threat of recurrent natural disasters.

4. The case in question is that of Dr. Xiao Xuehui, a moral philosopher and political essayist of 45 who, in the mid-1980s was appointed Associate Professor of Moral Philosophy at South Western Minorities University at Chengdu, the provincial capital of Sichuan Province in south-west China. Influential in establishing "The Philosophy of Life" as a specific field of study, Dr. Xiao Xuehui soon became prominent in this field, advocating a humanistic theory that individuals must be responsible for their own actions and moral behaviour.

5. Xiao Xuehui has published two books on ethics and humanism: *The Human Agent Theory of the Philosophy of Life* (1988), and *The Awakening and the Degradation of the Human Agent* (1988). The two articles which established Xiao's national reputation are: "*Human agency in the original motive force of all moral actions*" (1986) and "*The essential nature of morality lies in restraint*" (1987). Other recent articles include: "*A comparative study of Chinese and Western ethical culture*" (1994) and "*Fundamental characteristics and values of the new ethical culture*" (1994).

6. Early in 1989, Dr. Xiao spoke at demonstrations and led marches in Sichuan in favour of the pro-democracy movement. In the same year she was arrested, rejecting an offer of lenient treatment in return for informing on her associates. After 19 months in prison, during which time she received harsh physical treatment which has seriously worsened health problems with kidney and liver, Dr. Xiao was sentenced to "deprivation of political rights" and released, but also deprived of her Associate Professorship and, later, a teaching job. Being forced to survive on Y170 per month, paying for medical treatment is extremely difficult, while it also prevents any participation in the many conferences to which she is invited.

7. But this is not yet the full story. Effectively, Dr. Xiao has become a non-person. Early in 1995 her weekly column on moral philosophy and related questions in the *Chinese Youth Newspaper*, a major national journal, was banned by the Sichuan authorities, and on editorial appeal confirmed from Beijing. She is kept under close surveillance, her correspondence is intercepted, she has no telephone and any contacts are often interrogated. When invited to give a talk at a Beijing conference she was conspicuously followed and prevented from speaking. Officially approved academics have been allowed to plagiarize early works by Dr. Xiao, so far without redress, since appeals to relevant authorities, including the State Copyright Bureau, have been ignored.

8. Some 2,600 years ago the first hint of what we now call human rights was being proclaimed in China: "Do to every other person that which, if you were that person, you would that they do to you". The International Humanist and Ethical Union calls on the appropriate authorities to restore Dr. Xiao's former academic status, to see to it that her basic rights, academic freedom and copyright are once again respected and that her harassment is ended, thereby preserving the good name of the academic and legal systems in the People's Republic of China

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COMMISSION ON HUMAN RIGHTS
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of Minorities
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ELIMINATION OF RACIAL DISCRIMINATION: MEASURES TO COMBAT RACISM AND RACIAL DISCRIMINATION AND THE ROLE OF THE SUBCOMMISSION

PROTECTION OF MINORITIES

Written statement submitted by the International Human Rights Association of American Minorities, a non-governmental organization on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[15 June 1995]

Discrimination against African-Americans

1. The present communication is submitted to the Subcommission concerning possible violation of the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights and with further concern to United Nations need for early warning concerning all potentially violent situations, especially those which represent a potential threat to global peace or stability in the context of ongoing gross violations of the human rights of the African-American national minority as a result of official State policies of enslavement, segregation and forced assimilation or ethnocide.

2. IHRAAM seeks to call the attention of the United Nations to the effects of the 22 May, 1995 decision of the Supreme Court of the United States of America to decline to review a United States Court of Appeals decision that the Benjamin Banneker Scholarship Program of the University of Maryland, which offers scholarships to African-American students, represents a form of unconstitutional "reverse discrimination" on behalf of African-Americans. The Court of Appeals ruling held that the university scholarship programme violated the constitutional right to equal protection under the law of Daniel Podberesky, who met all qualifications for the full tuition scholarship other than race. According to officials familiar with the ruling, this particular decision places affirmative action programmes in more than 50 per cent of United States colleges in legal peril. 1/ By declining to review the Court of Appeals decision, and by denying without comment appeals by the university, by African-American students, and by the Clinton administration, who argued that the scholarships are a valid method of combatting lingering effects of past discrimination, the United States Supreme Court decision represents yet another in an ongoing series of judicial and legislative acts 2/ whose effect is to roll back United-States programmes of affirmative action.

3. The United States Court of Appeals ruling, now indirectly sanctioned by the United States Supreme Court, has occurred despite the fact that the United States is now signatory to both the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, under which the United States has obligations, and both of which have been interpreted to clearly refute the notion that affirmative action (special measures) taken on behalf of disadvantaged ethnic minority groups to assure their equal status with the majority group can be considered as reverse discrimination. The immediate effect of the United-States Appeal Court decision and United States Supreme Court's refusal to review it is a further facilitation of the rationale for the violation of minority rights under article 1 (4) of the Racial Discrimination Convention, and under article 27 of the Covenant, as further confirmed in the 1992 Declaration on the Rights of National or Ethnic, Religious and Linguistic Minorities, article 8 (3).

4. That the African-American national minority continues to suffer from pronounced inequalities in all social sectors as a result of official United States policies of enslavement, segregation and forced assimilation is confirmed in Special Rapporteur Maurice Glèlè-Ahanhanzo's report (E/CN.4/1995/78/Add.1), which specifically recommends that it should be explicitly acknowledged that 30 years of intense struggle against racism and racial discrimination have not yet made it possible to eliminate the consequences of over 300 years of slavery and discrimination, and calls for affirmative action programmes to be revitalized. The present United States court decisions appear to flout the Special Rapporteur's recommendations, as well as those of the United States President himself.

5. IHRAAM suggests that it is imperative that the United Nations consider the ongoing judicial and legislative actions against affirmative action, not simply within the context of their possible legal contravention of international treaties, but also as an important factor playing into a potentially crisis-engendering event scheduled to take place in the

United States in October, 1995. The event, billed as a March on Washington, D.C. by one million African-American males, has been launched by one of the largest grass-roots African-American organizations. Over two years in the organizing process, it has been consistently publicized to enthusiastic audiences of up to 30,000 persons, audiences which often not only fill the large meeting halls and churches, but spill over to gather outside in the thousands. This has been occurring in many areas of the country: in universities, public meeting halls, churches and mosques. The event appears to have galvanized the support of individuals from most sectors of the African-American community. African-American politicians and civil rights activists find themselves confronted with the necessity of clarifying their stand in relation to it, because conditions within the African-American community are viewed by it as resulting from official policies of forced assimilation, to which this leadership is seen as having acquiesced. This event or some other like it could serve as a kind of lightning rod for unmanageable social conflict. This is particularly true in the light of the present conservative agenda to roll back legal and procedural programmes of affirmative action, to deepen rather than lessen the African-Americans' disproportionally negative standing in all statistical indicators of social well-being.

6. It is important to recall that these very affirmative action policies which are now threatened were initiated in the wake of wide-spread African-American protest, which included both peaceful demonstrations as well as riots in most major American cities.

7. If it occurs, the convergence of thousands of African-American males on Washington, D.C. - thousands of men who have been widely depicted, in the grim humour of a current epithet as "an endangered species" - may bear major and potentially important ramifications on a national and international scale. We remind the Subcommission that while Washington is the glittering capital of the world's most democratic and freedom-loving nation, it is also a city populated in its majority by the oppressed African-American community still suffering gravely from the malaise resulting from the past gross violations of their human rights, where the percentage of young African-American males immersed in the criminal justice system exceeds 40 per cent. 3/ Should one million African-American males converge upon Washington - or indeed, half that number, or even one quarter - the possible outcome merits proactive action by the United Nations.

8. What might the ramifications be, should this March on Washington prove a catalyst of widespread ethnic violence in the United States, with the possible result of domestic repression and a concomitant curtailment of United States interest in human rights and United Nations issues globally? The human rights crisis looming in the United States may well be due to the malaise and lack of resolve within the majority community engendered by worsening economic conditions; or an uninformed public may feel resentment at not being able to succeed in improving African-American conditions solely within the framework of equality before the law/non-discrimination concepts. However, insofar as this approach has ignored the African-Americans' internationally recognized right to be different, to address their unique needs and circumstances by minority-controlled, publicly financed institutions, etc., it has in fact constituted forced assimilation (ethnocide). Thus, it should come as little

surprise that such an approach has proved as ineffective with African-Americans as it has with other minorities worldwide.

9. It is not the intent of this communication to assign blame for this crisis situation, but rather to seek to awaken the United Nations - as the only body capable of responsible and effective intervention in such a situation - to what may be at stake, and to suggest possible short- and long-term proactive measures the United Nations might see fit to take in order to assist peaceful and progressive development in United States society.

10. In addition to the preventive diplomacy being constantly undertaken by the United Nations in this regard (the Special Rapporteur's United States assessments; the establishment of the Working Group on Minorities), IHRAAM suggests that the United Nations might wish to assign monitors to the October March on Washington, in a manner similar to its action on the Canadian dispute at Oka, or, indeed, its monitoring of the Haitian election processes - as a reminder to both protesters and Government of the appropriateness of adhering to any of numerous effective modalities of peaceful protest or dispute resolution, and as a method of encouraging the non-violent intent of the march by relieving the frustrations that occur when suffering people feel that no one cares and that no one is really there who wants to listen to their complaints.

11. Furthermore, IHRAAM advocates establishment by the United Nations of a new working group or a subsection within the present Working Group on Minorities to specifically address the needs of formerly enslaved minorities, which as a group represent a population in the hundreds of millions worldwide. Formerly enslaved minorities suffer from a particularistic history of systemically entrenched gross human rights violations, which States have generally attempted to remedy through forcing their assimilation into and dependence on majority populations which are hostile to their absorption due to a prolonged, excessively unbalanced and negative historical interface, etc. No matter how successful the domination of formerly enslaved groups through denial of their right to be different and equal may have proved for maintaining State unity, the forced assimilationist model as practised and purveyed by the United States should not be accepted without due criticism of its effects on the situation and developmental potential of the minority as individuals and as a group. Even in the United States, it has led neither to assimilation nor to equal status for the mass of individuals of the formerly enslaved groups. Rather, it has functioned to prevent the achievement of their fundamental human rights: the rights to be different and to self-determination. Instead of promoting interdependency and equal-status interaction between minority and majority groups (which leads to true integration and assimilation), its legacy is complete dependency and alienation.

12. While the events which impel this communication are occurring in the United States, IHRAAM does not intend to suggest that the United States situation is unique, but rather views it is a part of a worldwide majority/minority problematic as it especially concerns formerly enslaved minorities. In this vein, it is hoped that tapping the intellectual and moral

resources of the global community may prove effective in the influence of public opinion and policy in all States concerned.

Notes

1/ Charles Babington, "Court Leaves Intact Ban on Blacks-Only Scholarships at U-Md.", Washington Post, 23 May, 1995, p. A01.

2/ Inter alia, in Croson v. City of Richmond (No. 87-998), the Court invalidated the city's minority business set-aside programme, thereby casting constitutional doubt on the validity of scores of such programmes nationwide; in Wards Cove Packing v. Atonio (No. 87-1387), the Court in effect overruled a 1971 opinion that placed the burden of proof on employers to justify policies that had the statistical effect of discriminating against minorities and women; in Martin v. Wilks (No. 87-1614) the Court allowed long-settled consent decrees involving racial discrimination to be opened to subsequent legal attack, threatening a costly, never-ending round of lawsuits by victims of racial discrimination; in Patterson v. McClain Credit Union (No. 87-7-811), the Court held that the Civil Rights Act of 1866 provided no grounds to sue for racial discrimination or harassment once employed, and in Jett v. Dallas Independent School District (No. 87-2084), the Court further weakened the 1866 act by holding that it did not provide a legal basis for suits against local governments for acts of race discrimination. Likewise, the proposed California Civil Rights Initiative, scheduled to be on the ballot in March 1996, seeks to bar preferential treatment (special measures) in state employment, education and contracts, etc.

3/ In April, 1992, the National Center on Institutions and Alternatives (NCIA) released a report which showed that 42 per cent of young African-American men in Washington, D.C. were immersed in the criminal justice system. In a second of a series of studies on America's urban areas, NCIA found that, adjacent to Washington, the city of Baltimore had 56 per cent of its African-American male population between ages 18-35 under criminal justice supervision on any given day in 1991. See "Hobbling a Generation: Young African-American Males in the Criminal Justice System of America's Cities: Baltimore, Md.", National Center on Institutions and Alternatives, Alexandria, V.A., 1992.